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Employment Explained

A bi-monthly update on recent changes in Employment Law

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Workers can Reclaim Holidays lost to Sickness

A surprising decision in the recent European case of *Pereda v Madrid* is now authority for the proposition that an employee who falls ill while on annual leave is entitled to replacement holiday allowance.

Mr Pereda had pre-booked annual leave to go on holiday, but he had an accident rendering him unable to work before the beginning of his proposed period of annual leave. His did not recover until after his holiday would have ended. Mr Pereda then asked his employer if he could re-book his holiday as he had been sick for the entire period.

The employer refused, and Mr Pereda challenged this in the Spanish courts.

The case went to the European Court of Justice (ECJ), who ruled



that Mr Pereda should be entitled to replacement annual leave to make up for his being ill over the period of his holiday.

This is a reversal of the previous interpretation

of the law, and is clearly open to abuse. Employees will potentially be able to claim that they were ill during a period of annual leave and then demand a second period of leave.

In the long term this decision may lead to employers being unwilling to give employees any more than the statutory leave entitlements, because of the possibility of dishonest employees attempting to double their time off.

Employers would be advised to ensure that they have rigorous absence reporting policies in place to minimise such risks.

High Court Rules Retirement at 65 is Legal

The long-awaited judgment in the 'Heyday challenge' has finally arrived. The case, which was brought by the charities Age Concern and Help the Aged, sought to challenge the ability of an employer to compulsorily retire employees at the age of 65. The case was brought on the basis that the UK law was incompatible

with the European Directive outlawing discrimination on grounds of age. Now the High Court has said that as long as the proper procedure is followed, it is legal for an employer to force an employee into retirement once they reach 65.

As a result of this decision, a large number of

age discrimination cases which had been put on hold by Employment Tribunals pending the outcome of the Heyday Challenge will in all likelihood be dismissed.

However, it remains to be seen whether the current default retirement age will survive the Governmental review due to take place in 2010.



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City Accountant Claimed £40 Million, Awarded £750.



Miheala Popa, a former employee of major accountancy firm PWC brought a claim against them in the Employment Tribunal alleging that in giving her a poor reference her ex-employer had attempted to sabotage her career.

Ms Popa had previously failed in claiming constructive unfair dismissal and racial discrimination against PWC, stating

that she had been targeted by other employees because she was Romanian, told that 'Eastern Europeans are whores' and tricked into going into a sex shop by a colleague.

The claim in relation to the adverse reference was the only one to succeed, and of the £40 million that Ms Popa claimed, she was awarded a mere £750 by the Employment Judge

for injury to feelings. The Judge pointed out that the poor reference was a one off incident, and had not prevented Ms Popa from obtaining a new job on a higher salary or caused her any financial loss.

PWC's legal fees in defending the case are thought to be a six figure sum, which they are now attempting to recover, at least in part, from Ms Popa.

Guides on Injury to Feeling Awards Increased

The case of *Vento* in 2002 set down guidance for Tribunals to use when valuing claims for injury to feelings in discrimination cases, by setting 3 bands of award. These bands have just been increased in the case of *Da'Bell v NSPCC*.

The lower band, which is for less serious cases of

injury to feelings, perhaps involving a one-off incident, should be awarded up to £5,000 according to *Vento* but this is now up to £6,000. The middle band, for more serious cases, has gone up to a recommended maximum award of £18,000 where the previous upper limit was £15,000, and the highest band, for the

most serious cases, has gone from a recommended maximum of £25,000 up to £30,000.

These bands act as guidelines, but the individual Tribunals retain discretion to make awards for injury to feelings within the different bands according to the circumstances of each case.

The most serious cases of discrimination can now be awarded up to £30,000 for injury to feelings.



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